

Exhibit WWW.

BRIAN NEWBOLD

COPY

11/13/2013

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SHANE GALITSKI, RICHARD TALIAFERRO
and BRIAN NEWBOLD, Individually
and on Behalf of All Others Similarly
Situated,

Plaintiffs,

vs.

No. 3:12-CV-4782-D

SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC,

Defendant.

DEPOSITION OF BRIAN NEWBOLD

San Diego, California

Wednesday, November 13, 2013
Volume I

Reported by:
ANGELA METZ
CSR No. 12454

JOB No. 10186

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1 MS. DIDONATO: Kathrine Didonato for Doyle
 2 Lowther for Brian Newbold and the class.
 3 THE VIDEOGRAPHER: Thanks very much.
 4 Will the court reporter please now swear in the
 5 witness.
 6
 7 BRIAN NEWBOLD,
 8 having been first duly sworn, was examined and testified
 9 as follows:
 10
 11 EXAMINATION
 12
 13 BY MR. VOLNEY:
 14 Q. Mr. Newbold, will you tell us your full name for
 15 the record.
 16 A. Sure. Brian Andrew Newbold.
 17 Q. Tell us where you live Mr. Newbold?
 18 A. I live at [REDACTED]
 19 [REDACTED]
 20 Q. How far away is Garden Grove away from here?
 21 A. I don't believe it's -- it's around the 100-mile
 22 mark.
 23 Q. Okay. Mr. Newbold, have you ever given a
 24 deposition before?
 25 A. No, I have not.

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1 Q. Okay. Let me lay a few ground rules.
 2 Now first of all, you do understand that you're
 3 giving a -- giving a deposition in connection with a class
 4 action lawsuit that you and two other folks filed against
 5 the defendant, Samsung Telecommunications America?
 6 Do you understand that?
 7 A. Yes.
 8 Q. And you understand that in connection with that
 9 lawsuit, you've been named as a proposed class
 10 representative.
 11 Got it?
 12 A. Yes.
 13 Q. And you understand that you're obligated to
 14 answer my questions truthfully?
 15 A. Yes.
 16 Q. And to the best of your ability?
 17 A. Yes.
 18 Q. And it's just as if we were sitting in the
 19 courtroom and the judge was sitting on the bench. It's
 20 just as if that were occurring here today.
 21 Got it?
 22 A. Yes.
 23 Q. Okay. Now during the deposition, if I ask you a
 24 question that you don't understand, will you please let me
 25 know?

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1 A. I will.
 2 Q. And one thing that's important is that we don't
 3 talk over each other because Angela will have a hard time
 4 typing it down.
 5 You got that?
 6 A. Yes.
 7 Q. Is there any reason why you can't testify fully
 8 and truthfully today?
 9 A. No.
 10 Q. For example, you aren't taking any medications?
 11 A. No.
 12 Q. Okay. Now tell me, what did you do to get ready
 13 to give your deposition in this case?
 14 A. To -- to give my deposition in this case?
 15 There's nothing in particular that I did, nothing today.
 16 But I did review with counsel previous to this, just to
 17 understand the deposition process, and to understand the
 18 case in front of us in detail.
 19 Q. Did you look at any specific documents?
 20 A. The -- the causes of action and the
 21 interrogatories in the documents that I -- that I
 22 reviewed.
 23 Q. Right. Okay. We'll look at those later.
 24 I take it you've never given a deposition before?
 25 A. No, I have not.

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1 Q. And you've never -- have you ever been a party to
 2 a lawsuit?
 3 A. No, I have not.
 4 Q. So it's fair to say this is your first effort to
 5 become a class representative for a class action, right?
 6 A. That's correct.
 7 Q. Now before we talk a little bit about the class
 8 action process, tell me what your educational background
 9 is.
 10 A. My educational background? Went to college at
 11 Cal State Long Beach and studied computer engineering.
 12 Q. All right. What is your current employment?
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 Q. And how long were you with Symantec?
 17 A. I was with Symantec for approximately a year and
 18 a half, and was hired through acquisitions. So a total
 19 span of about three years.
 20 Q. Who was the -- who got acquired?
 21 A. Who got acquired was a company called Live
 22 Office, and they're based in Torrance.
 23 Q. All right. And then in August of 2010, were you
 24 working for?
 25 A. For Live Office.

3 (Pages 6 to 9)

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1 Q. So -- okay. Explain for me how that process
2 works.
3 MS. SMITH: Objection; form.
4 THE WITNESS: So the IDE is a development
5 environment which you download onto a personal computer.
6 BY MR. VOLNEY:
7 Q. Right.
8 A. And that personal computer is where you do all of
9 the programming and entry of the -- of your idea and --
10 and -- and bring it to fruition on there.
11 You also can run it in a virtual environment and
12 test it separately on your computer before ever deploying
13 it to a phone.
14 Q. Was one of the reasons you got the -- well, let
15 me back up.
16 Was the -- which model were you on? Verizon?
17 You were a Sprint customer?
18 A. Yes.
19 Q. So you bought the Epic 4G?
20 A. That's correct.
21 Q. Was that your first Android phone?
22 A. No.
23 Q. What Android phone did you have before the
24 Epic 4G?
25 A. The -- the Samsung Vibrant through T-Mobile.

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1 Q. And was that -- that was your first Android-based
2 phone?
3 A. That was my first Android-based phone.
4 Q. Why did you switch from this Samsung Vibrant?
5 A. The Samsung Vibrant on T-Mobile was -- it
6 appeared to be a good device, but it didn't have a
7 slide-out keyboard. And the slide-out keyboard is why I
8 returned the Samsung Vibrant under the California 15- or
9 30-day policy where you can return a cell phone.
10 And I used that policy to return my cell phone,
11 cancel my contract, and move to the Epic 4G, which had the
12 slide-out -- the slide-out keyboard.
13 Q. All right. And were you a Sprint customer before
14 you got the Epic 4G?
15 A. Yes.
16 Q. All right. How long had you been a Sprint
17 customer?
18 A. I -- I don't know offhand.
19 Q. So --
20 A. For --
21 Q. Go ahead.
22 A. For quite a few years.
23 Q. Did you cancel Sprint when you went to T-Mobile?
24 A. I cancelled Sprint when I went to T-Mobile, yes.
25 Q. Within the space of 15 or 30 days, you canceled

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1 and went back to Sprint?
2 A. That's correct.
3 Q. And one of the motivating factors, I think you
4 said, is because the Epic 4G sold by Sprint had a
5 slide-out keyboard?
6 A. That's correct.
7 Q. That's one of the reasons why you wanted the
8 Epic 4G over the Samsung Vibrant?
9 A. That's correct.
10 Q. Let's talk a little bit about the process you
11 went through to make the decision to -- to buy the -- the
12 Epic 4G.
13 I think you've testified that you -- well, we
14 just talked about this -- got the Vibrant, decided you
15 didn't like the keyboard arrangement, so then you went
16 back to --
17 Where did you go to purchase the -- the Epic 4G?
18 A. The Epic 4G? I purchased it at a Sprint kiosk
19 down in a Radio Shack store in Garden Grove.
20 Q. All right. And did you -- what did you do to
21 research whether you wanted that particular phone, or did
22 you research?
23 MS. SMITH: Objection; form.
24 THE WITNESS: I -- I saw the marketing literature
25 online, Samsung's website about the Galaxy S line, and

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1 that was -- I think that was the driving motivator for me
2 to purchase that phone.
3 BY MR. VOLNEY:
4 Q. What about that marketing material motivated you?
5 A. Nothing in particular, except for the -- like
6 the -- I believe it's like the super AMOLED screen was --
7 was, you know, very bright and rich colors. And also it
8 was -- it was the latest and greatest model of a phone
9 to -- to roll out at that time.
10 Q. Okay. And how long did you have your Epic 4G?
11 A. I had my Epic 4G for -- pardon me --
12 approximately -- let's see.
13 I believe it was not quite a year and a half. I
14 mean I still possess the phone, but about a year and a
15 half is when I -- I stopped using it.
16 Q. Okay. So you currently -- you're in possession
17 of the phone?
18 A. My phone is actually in possession of counsel.
19 Q. Okay. And what phone did you switch to?
20 A. I switched to the iPhone 4s.
21 Q. Is that currently the phone you're using?
22 A. No.
23 Q. What are you -- what are you on next?
24 A. The iPhone 5c.
25 Q. When you made the decision to purchase the

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1 you use the phone for?
 2 A. It was a personal phone.
 3 Q. E-mail? Text? Phone calls? Navigation?
 4 A. Yes. All of the above.
 5 Q. Use of whatever apps you downloaded to the phone?
 6 A. Yes.
 7 Q. Did you use that -- did you use any particular
 8 type of software to transfer your contacts from your
 9 previous phone to the Samsung phone?
 10 MS. SMITH: Objection; form.
 11 THE WITNESS: No. I don't believe I used any --
 12 I -- I didn't use any third-party applications to do that,
 13 at least.
 14 BY MR. VOLNEY:
 15 Q. I've heard of an application called Cele-Bright.
 16 I'm not even sure how it's spelled.
 17 A. I've never heard of that.
 18 Q. Did you root the Samsung device?
 19 A. Yes, I rooted the phone.
 20 Q. You rooted the phone. All right.
 21 And at what point in your ownership of the phone
 22 did you root it?
 23 A. I believe it was -- it was -- goodness. I don't
 24 remember the -- the exact date that I rooted the phone,
 25 but I did exhaust all that with Sprint and Samsung, and --

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1 and had applied every update that they had asked for
 2 and -- and had -- had done every step that they -- that I
 3 believe they asked for for trying to find the -- the root
 4 of the problem. I acted proactively as a customer to
 5 figure this thing out.
 6 Once those efforts were exhausted, and once --
 7 once Sprint and Samsung told me that there were no
 8 other -- nothing else you could do besides replace the
 9 phone at my cost, that's when I rooted the phone trying to
 10 figure out a way to get this thing to work, because I
 11 wanted a phone that works.
 12 Q. Now in your answer to my question, you said that
 13 you talked to both Samsung and Sprint?
 14 A. That's correct.
 15 Q. How did you get in touch with Sprint?
 16 A. Through the customer service line. I believe it
 17 was like 611. You dial from your phone. Also through
 18 e-mail, and being on the Sprint forums.
 19 Q. Did -- how did you get in contact with Samsung?
 20 A. I don't remember exactly. I called directly, but
 21 I don't remember exactly who -- it was just like the
 22 general customer service line, I think, from the -- from
 23 the website, but nothing in particular.
 24 Q. How many times did you call Samsung?
 25 MS. SMITH: Objection; form.

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1 THE WITNESS: At least twice, but -- yeah. At
 2 least twice.
 3 BY MR. VOLNEY:
 4 Q. Did you ever have any e-mail communication with
 5 anybody at Samsung?
 6 A. No, I did not. Not to my knowledge, at least.
 7 Q. Did you ever send your phone to Samsung customer
 8 care for repair and replacement?
 9 A. No, I didn't.
 10 MS. SMITH: Objection; form.
 11 MR. VOLNEY: You got that?
 12 THE REPORTER: "No, I didn't." The answer was,
 13 "No, I didn't."
 14 THE WITNESS: Just repeat the question so it's
 15 clear?
 16 MR. VOLNEY: I thought you answered my question.
 17 THE REPORTER: Sorry.
 18 BY MR. VOLNEY:
 19 Q. So I just asked you if you called Samsung. You
 20 said you talked to them a couple of times. And then I
 21 asked you, did you ever send your Samsung device to
 22 Samsung for repair or replacement.
 23 MS. SMITH: And I said, Objection; form.
 24 THE WITNESS: And I said, No, I have not sent my
 25 phone to Samsung.

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1 BY MR. VOLNEY:
 2 Q. Okay. Did you read the warranty that Samsung
 3 provided with the cell phone?
 4 MS. SMITH: Objection; form.
 5 THE WITNESS: I -- I don't believe I read it in
 6 depth; skimmed it at most. But I don't really recall
 7 would be the most appropriate answer.
 8 BY MR. VOLNEY:
 9 Q. I think that's fair.
 10 Do you know whether the warranty directed the
 11 purchaser of the phone to return the phone or to provide
 12 the phone to Samsung for repair or replacement?
 13 A. I do --
 14 MS. SMITH: Objection; form.
 15 THE WITNESS: Sorry, Sam.
 16 MS. SMITH: It's okay.
 17 THE WITNESS: I don't know if the warranty
 18 directed me to do that.
 19 BY MR. VOLNEY:
 20 Q. Regardless of what the warranty said, you did not
 21 send it to Samsung to be repaired or replaced, correct?
 22 A. That's correct. I did not return it to Samsung.
 23 Q. Did you ever -- I think you've answered this, but
 24 I'm getting -- there's three of you, so there's some
 25 divergent details.

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1 But my understanding is that you never got a
 2 replacement phone?
 3 A. That's correct.
 4 Q. Okay. And then after owning the Epic 4G for 18
 5 months, you just gave up on it and bought a new phone?
 6 A. That's right. After all efforts had failed for
 7 me to get this thing to work in a reasonable manner, my --
 8 it was actually the frustration of it, and -- and got a
 9 new phone.
 10 Q. Do you know whether your Samsung phone ever
 11 suffered any water damage?
 12 MS. SMITH: Objection; form.
 13 THE WITNESS: Sorry Sam, again.
 14 No. My phone didn't -- was never subject to any
 15 water damage.
 16 BY MR. VOLNEY:
 17 Q. What about other damage like dropping it or heat
 18 damage from staying in your car?
 19 A. Outside of normal wear and tear? No.
 20 Q. How did you -- how did you go about charging the
 21 phone?
 22 MS. SMITH: Objection; form.
 23 THE WITNESS: With the Samsung-provided charger.
 24 BY MR. VOLNEY:
 25 Q. Did you ever use a car charger?

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1 A. Yes, I used a car charger.
 2 Q. Do you know who the manufacturer of that car
 3 charger is?
 4 A. I -- I don't know offhand.
 5 Q. Did you back up the phone to a desktop or laptop
 6 computer?
 7 A. Yes. Sorry.
 8 MS. SMITH: It's okay.
 9 BY MR. VOLNEY:
 10 Q. Yes?
 11 A. The answer is yes, I backed up to a computer.
 12 Q. Thank you. All right.
 13 And how often would you do that?
 14 MS. SMITH: Objection; form.
 15 THE WITNESS: I backed up -- I'd like to say I
 16 backed it up weekly when I was being a good -- when I was
 17 being good, I was backing up weekly, and usually at least
 18 every month.
 19 BY MR. VOLNEY:
 20 Q. All right. Did you store any confidential
 21 information on the phone?
 22 MS. SMITH: Objection; form.
 23 THE WITNESS: I don't see how that applies. I
 24 don't recall.
 25 BY MR. VOLNEY:

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1 Q. I mean like passwords. I mean --
 2 MS. SMITH: Objection; form.
 3 THE WITNESS: Maybe you should ask the question,
 4 and then I'll answer it directly because it's kind of a
 5 vague question.
 6 BY MR. VOLNEY:
 7 Q. Okay. Well, let me back up.
 8 One of the things that Samsung wants to do in
 9 connection with this lawsuit is to test your phone.
 10 Got that?
 11 A. Uh-huh. Yes.
 12 Q. And one of the objections that we're being met
 13 with by your counsel is that there might be some
 14 confidential information on the phone that you don't want
 15 to go out into the world.
 16 A. That's reasonable, yes.
 17 Q. So now I'm asking you, is there any confidential
 18 information on your phone?
 19 MS. SMITH: Objection; form.
 20 THE WITNESS: Again, I believe that the question
 21 is vague in terms of the specific nature of any
 22 confidential information. But yes, I would assume that my
 23 phone does have confidential information that I would not
 24 like to have out in the open, and not like to have
 25 provided to -- to anybody without -- yeah. I just would

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1 not like anybody to have that information.
 2 BY MR. VOLNEY:
 3 Q. Was that one of the motivating reasons why you
 4 didn't send your phone back to Samsung for repair or
 5 replacement?
 6 MS. SMITH: Objection form.
 7 THE WITNESS: No.
 8 BY MR. VOLNEY:
 9 Q. Was the fact that you had rooted the phone a
 10 reason why you hadn't sent it back to Samsung for repair
 11 or replacement?
 12 MS. SMITH: Objection; form.
 13 THE WITNESS: No.
 14 BY MR. VOLNEY:
 15 Q. Do you know whether routing a cell phone voids
 16 the limited warranty provided by Samsung?
 17 MS. SMITH: Objection; form.
 18 THE WITNESS: I don't know in particular;
 19 however, I took precautions before routing my phone to
 20 make sure that all -- that I had exhausted every method
 21 that I could think of to get this thing to work. It was,
 22 again, only in an effort to get a working phone did I root
 23 that phone.
 24 BY MR. VOLNEY:
 25 Q. Well, not to be argumentative, one thing you

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1 didn't do was to send it to Samsung for repair or
 2 replacement under the warranty; is that right?
 3 MS. SMITH: Objection; form.
 4 THE WITNESS: That's correct.
 5 BY MR. VOLNEY:
 6 Q. Okay. Are you, today, opposed to Samsung testing
 7 the phone?
 8 MS. SMITH: Objection to form.
 9 THE WITNESS: I believe -- I'll defer to counsel
 10 on that.
 11 BY MR. VOLNEY:
 12 Q. Do you know whether any third party has tested
 13 the phone?
 14 MS. SMITH: Objection; form.
 15 THE WITNESS: I'm not aware of any third party
 16 testing the phone.
 17 BY MR. VOLNEY:
 18 Q. Did you ever take it to a Sprint store to have
 19 them test it?
 20 A. Yes. I brought it to the Sprint store to discuss
 21 and to -- and to try to come to an answer for the problems
 22 of the device.
 23 Their direction was to -- to reboot -- or rather
 24 not reboot but reset the phone to factory defaults. I had
 25 pursued that many times before. And -- and they were

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1 welcome to take the phone, but you know, they -- they
 2 would have just handed back a reset phone, and it's -- at
 3 the very least, it's inconvenient to have your phone
 4 completely wiped clean.
 5 Q. Did the phone function -- well, here's the
 6 question: So when you do go back to factory default on
 7 a -- on a cell phone, it's my understanding -- and I'm
 8 asking you -- does it wipe out any third-party apps that
 9 you put on the phone?
 10 MS. SMITH: Objection; form.
 11 THE WITNESS: It does for me, yes. It wipes out
 12 all of the third-party apps, and -- and it should wipe out
 13 all of the data.
 14 BY MR. VOLNEY:
 15 Q. All right. We're going to talk at length about
 16 the defects that you had with the Samsung phone. But
 17 before we get to the specifics of those defects, did
 18 restoring to factory defaults solve any of the defects you
 19 experienced with the phone?
 20 MS. SMITH: Objection; form.
 21 THE WITNESS: No, it did not. Let me restate
 22 that.
 23 Restoring it to factory defaults cleaned up some
 24 small issues, possibly, with -- I don't know what. But it
 25 -- but it never solved the greater issue at hand, which

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1 was it rebooting, and it -- you know, the sleep defect
 2 where it would fall asleep and then restart from sleep.
 3 I -- I even believe I factory reset the phone and
 4 had zero applications on it, aside from -- aside from
 5 providing my -- you know, my e-mail password and the
 6 basics on the phone, and it still had issues.
 7 So from a very fresh factory reset, it was still
 8 causing issues.
 9 BY MR. VOLNEY:
 10 Q. So let's talk about defects.
 11 What are the defects that you're complaining
 12 about?
 13 MS. SMITH: Objection; form.
 14 THE WITNESS: The defects that I'm complaining
 15 about are specifically the -- the fact that the Samsung
 16 phone resets. It will do a reboot cycle as if you had
 17 powered it off and powered it on when the phone falls
 18 asleep.
 19 BY MR. VOLNEY:
 20 Q. Okay. What else?
 21 A. For this case? That's, I believe, it. Or at
 22 least that's the main -- the main reason for this case.
 23 The phone has other issues too, but those are not in this
 24 case.
 25 Q. Well, I've looked at a bunch of your e-mails and

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1 communication with Sprint --
 2 A. Sure.
 3 Q. -- and I've seen a lot more issues that you
 4 complained about with your phone with Sprint.
 5 A. Uh-huh.
 6 Q. So why don't I just ask this question: What
 7 issues did you raise with Sprint while you were using the
 8 phone?
 9 MS. SMITH: Objection; form.
 10 THE WITNESS: I don't recall -- I certainly don't
 11 recall all of them, but I had some issues with the
 12 speakerphone, I think, like right at the beginning. That
 13 wasn't that bad.
 14 But it was an issue with the -- connecting to an
 15 exchange server, which is an e-mail server.
 16 BY MR. VOLNEY:
 17 Q. Right.
 18 A. And it wouldn't connect properly. I don't
 19 remember exactly what the probably was. I think it was
 20 like something with the syncing of the phone with that
 21 exchange problem.
 22 Some crashes where you'd have to take the battery
 23 out and put it back in to get the phone to reset.
 24 And it would -- I think it would freeze from time
 25 to time as well. But again, mostly it was remedied by

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1 pulling the battery out and putting it back in.
 2 Q. All right.
 3 A. And then of course the -- the -- the big one was
 4 the -- it doing full reboots just left untouched sitting
 5 on your desk within its own sleep mode.
 6 Q. Is the full reboots from sleep mode, is that
 7 different from the crashing issue and the freezing issue
 8 where you had to take the battery in and out?
 9 A. That's correct.
 10 Q. Okay. So in terms of what we're -- the lawsuit's
 11 about, in your view, is that the Samsung phone resets and
 12 reboots after it falls asleep?
 13 A. Yes.
 14 Q. And I want to talk about that. I just want to
 15 make sure I understand.
 16 That's different from issues where the phone
 17 crashes or freezes and you have to -- actually, I don't
 18 even know if it's possible with an iPhone -- but take out
 19 the battery and start over?
 20 MS. SMITH: Objection; form.
 21 THE WITNESS: And my answer to that is I don't
 22 know. I don't -- I don't really understand -- I
 23 understand the issues that I faced with the phone, but I
 24 don't understand any of the root causes or the way that
 25 it's connected with other things.

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1 BY MR. VOLNEY:
 2 Q. That's fair. I understand that.
 3 Fair to say, though, you're more experienced than
 4 most people when it comes to cell phones, right?
 5 MS. SMITH: Objection; form.
 6 THE WITNESS: I don't know most people, so my
 7 answer is I don't know.
 8 BY MR. VOLNEY:
 9 Q. Well, I mean I think it's fair to say that
 10 somebody who has downloaded the development -- development
 11 environment for Android apps probably has more knowledge
 12 about Android cell phones than the average person on the
 13 street, right?
 14 MS. SMITH: Objection; form.
 15 THE WITNESS: I wouldn't dare to even speculate
 16 as far my knowledge of the Android versus the general
 17 public. I don't know. I know that --
 18 BY MR. VOLNEY:
 19 Q. That's okay. I'm not trying to turn you into an
 20 expert.
 21 A. No. I understand.
 22 Yeah, outside of the tinkering that I did with
 23 downloading the IDE and trying to understand better what
 24 Android had to offer, that's it.
 25 Q. Okay. I got you. Let's move on.

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1 Now explain for me how the defect that you're
 2 complaining about --
 3 A. Uh-huh.
 4 Q. -- how it manifested itself and what you had to
 5 do to resolve it, if you could?
 6 MS. SMITH: Objection; form.
 7 THE WITNESS: It -- how did it manifest itself?
 8 It would -- the phone -- let's see.
 9 It has changed over time with over-the-year
 10 updates. But the thing that it was always either freezing
 11 or -- or rebooting, but in particular, it -- it -- for a
 12 time it was rebooting on its own.
 13 It -- the phone would -- I would use the phone as
 14 normal, and then -- and then like just hit the power
 15 button, whatever, to go into sleep mode, and then -- as if
 16 I was putting my phone down, just setting my phone down.
 17 And then all of a sudden you would hear the -- the chimes
 18 of the phone rebooting. So it would -- it would just sit
 19 there on the table and reboot on its own.
 20 There are cases that, you know, as soon as I put
 21 it down or in the middle of the night, it was just doing
 22 it what seemed like at random intervals, but it was quite
 23 frequent that it was doing it. Certainly more frequently
 24 than a phone should.
 25 BY MR. VOLNEY:

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1 Q. All right. Turn off your phone, it's in sleep
 2 mode.
 3 A. Uh-huh.
 4 Q. Set it down, you go about your business, you're
 5 in the room next door eating a sandwich.
 6 A. Uh-huh.
 7 Q. And you hear your phone reboot.
 8 And I take it the Samsung phone makes some sort
 9 of distinctive sound when it reboots?
 10 A. Yeah. The -- the start up chimes of the -- of
 11 the phone.
 12 Q. All right. And what -- how did that -- well, let
 13 me ask two questions.
 14 Did it -- did it hurt your ability to use the
 15 phone in any way?
 16 A. Yes.
 17 MS. SMITH: Objection; form.
 18 THE WITNESS: Sorry.
 19 Yes.
 20 BY MR. VOLNEY:
 21 Q. Okay. In what way?
 22 A. Well, while it was rebooting I couldn't place any
 23 calls or receive any calls, obviously. Many times I found
 24 myself that -- that I wanted to use my phone and it was
 25 going through the process of -- of booting up again. And

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1 Q. And was that sort of a consistent problem from
2 day one to end of your ownership of the phone?
3 A. Consistent in that it happens, yes. Consistent
4 in frequency? Probably no. There was a lot of
5 variability in there.
6 Q. All right. What did you do?
7 Did you make any effort to raise that particular
8 issue with Sprint?
9 A. I had spoken about the issue with Sprint, yes.
10 Q. What did Sprint tell you?
11 A. The general feedback from Sprint was reset your
12 phone.
13 Q. What did they tell you, to take the battery out
14 and put it back in, or --
15 A. I don't know if I was ever directed by Sprint to
16 do that.
17 Q. Would you consider the crashing and freezing
18 problem sort of the major problem with the Samsung phone?
19 MS. SMITH: Objection; form.
20 THE WITNESS: It's -- it's a problem for me. I
21 couldn't really -- I couldn't really say whether it's a
22 major problem for users, but it should be a working phone.
23 BY MR. VOLNEY:
24 Q. In any event, in your understanding, that's not
25 the reason why we're here today. We're here today to talk

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1 BY MR. VOLNEY:
2 Q. In your -- are -- sorry. I can't remember
3 everything you said. I'm doing my best.
4 A. I'm doing my best too.
5 Q. When you're a developer, and you -- are you a
6 software developer or hardware developer, or both,
7 professionally?
8 MS. SMITH: Objection; form.
9 THE WITNESS: Professionally? Currently neither.
10 BY MR. VOLNEY:
11 Q. And I know you're between jobs.
12 A. No. Yeah, I knew that question was coming up.
13 And not with respect to being in between jobs.
14 My current profession is sales operations.
15 Q. Okay. Before?
16 A. Before that I was a -- I was a developer, a
17 software developer dealing with Windows software for
18 Windows machines.
19 Q. Okay. But not developing software for these
20 types of handheld consumer devices?
21 A. That's correct.
22 Q. Okay. And then in connection with that prior
23 experience, you didn't deal with power management issues
24 for consumer devices?
25 A. Never.

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1 about the reset/reboot issue.
2 MS. SMITH: Objection; form.
3 THE WITNESS: We're here -- my understanding is
4 that the -- that we're here to talk about the -- the
5 sleeping and rebooting issue; that the freezing and
6 crashing issue, it -- I think it would be best said that
7 that is one of the contributing factors to why we're here
8 today, that the freezing and crashing, the exchange issue,
9 and other issues of the phone are what -- what made the
10 phone not work as good as it should.
11 And by "as it should" meaning a phone that you
12 actually pick up and can dial out and can get telephone
13 calls on and is a phone first.
14 So those are contributing factors to why we're
15 here today, but it may not why we're here today in
16 particular. The actionable item is the rebooting on
17 sleep.
18 BY MR. VOLNEY:
19 Q. Okay. That's fair.
20 In your educational experience, do you have any
21 knowledge with respect to how power management in a cell
22 phone works?
23 MS. SMITH: Objection; form.
24 THE WITNESS: Not -- not in particular in a cell
25 phone, no.

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1 Q. All right.
2 MR. VOLNEY: So why don't we take a little break.
3 Is that okay?
4 MS. SMITH: Sure.
5 THE VIDEOGRAPHER: 1:48. We're off the record.
6 (Recess.)
7 THE VIDEOGRAPHER: At 2:03 we're back on the
8 record.
9 BY MR. VOLNEY:
10 Q. All right. Let's change subject matters for a
11 little bit, something more entertaining.
12 Earlier I asked you whether you'd ever served as
13 a class representative before, and you said no.
14 Have you ever been a member of a certified class?
15 A. I've gotten like the little card in the mail, the
16 check for \$10, but I don't recall what exactly that was
17 for, or when.
18 Q. All right. Can you tell me what is your
19 understanding of what your job is; what your job duties
20 are as the class representative?
21 A. As a class representative, it's -- it's basically
22 to -- to bring forward the issues of what we're dealing
23 with here, and to represent the larger body class, the
24 individuals who didn't know about a lawsuit or didn't know
25 about any abilities that they might have to -- to -- to

13 (Pages 46 to 49)

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1 bring a suit up like this, so --
 2 Q. So you -- you have -- you have an understanding
 3 that you're going to have rep- -- well, sorry. Let me
 4 speak coherently.
 5 You're going to represent a class of people who
 6 purchased the Samsung Epic 4G.
 7 You understand that?
 8 MS. SMITH: Objection; form.
 9 THE WITNESS: I understand that, yes. But I -- I
 10 would think that the larger class is actually the Galaxy S
 11 line in the variance, Epic 4G being one of those Galaxy S
 12 phones.
 13 BY MR. VOLNEY:
 14 Q. Okay. So sitting here today, you have an
 15 understanding that you might be representing people who
 16 bought Galaxy S phones affiliated with other carriers?
 17 A. That's correct. I'm -- that may be -- that is
 18 what we're going for, to -- looking at the Galaxy S line
 19 instead of just the Epic 4G.
 20 Q. And it will be specifically related to this
 21 rebooting problem that you described for us earlier?
 22 MS. SMITH: Objection; form.
 23 BY MR. VOLNEY:
 24 Q. Right?
 25 A. Yes. I'll be representing the class on that.

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1 Q. All right. Now what do you do to keep track of
 2 what's going on in the lawsuit?
 3 MS. SMITH: Objection; form.
 4 THE WITNESS: I discuss -- I discuss my issues
 5 and problems with -- with -- with my counsel, and just
 6 keep up to date with where the suit is and -- and you
 7 know, where it's been filed, and pretty much the status of
 8 it as it goes along.
 9 BY MR. VOLNEY:
 10 Q. Did you have any input into the complaint that
 11 your lawyers filed?
 12 A. Input into the complaint that my lawyers filed in
 13 terms of the -- in terms of discussing at length the
 14 issues that I had had. But as far as the -- as far as the
 15 complaint that was put forth to the Court, reviewing the
 16 documents to make sure it's all correct and my best
 17 knowledge.
 18 I'm not a lawyer, so --
 19 Q. Right. I take it you had factual input into the
 20 complaint?
 21 A. That's correct.
 22 Q. But the legal side of it you're -- you're leaving
 23 to the experts here at Doyle?
 24 A. That's correct.
 25 Q. Now do you have a written engagement agreement

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1 with Doyle Lowther?
 2 A. I don't believe so. I can't recall offhand. I
 3 think that my involvement was just -- was all of the --
 4 you know, the preparatory side of this, and then -- and
 5 then signing off on some of the documents that were
 6 submitted. But there's no like --
 7 Q. No contract, for example?
 8 MS. SMITH: Objection; form.
 9 THE WITNESS: I -- I don't believe so.
 10 BY MR. VOLNEY:
 11 Q. Now have you been promised any extra compensation
 12 for serving as a class representative?
 13 A. No, I have not.
 14 Q. How is it that you were -- became introduced to
 15 your lawyers here at Doyle Lowther?
 16 A. Let's see. I believe I was on one of the --
 17 the -- whether it was a Sprint forum or -- no, it wasn't a
 18 Sprint forum. It was a forum, a web forum discussing the
 19 phone and the problems.
 20 And it was after being -- really coming to the
 21 end of the road with the phone, and I saw a little banner
 22 ad, and I just clicked it, and that's -- that's where it
 23 all started from there.
 24 Q. Do you recall what the banner ad said?
 25 A. No, I don't offhand.

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1 Q. Wasn't just a random banner ad, I assume. Must
 2 have had something that caused you to click it?
 3 MS. SMITH: Objection; form.
 4 THE WITNESS: The cause to click it were
 5 basically just asking if you have a problem with the --
 6 with the phone that you got.
 7 And I clicked the link, and -- and then -- and
 8 then after that I was called by Doyle Lowther -- or by the
 9 company. I don't remember the exact person I spoke to
 10 initially, but -- but I was contacted by the firm.
 11 BY MR. VOLNEY:
 12 Q. Do you know if that person is here in the office?
 13 A. I don't believe that person is here in the
 14 office, but I don't know for sure.
 15 Q. I'm just trying --
 16 A. Yeah.
 17 Q. -- curious if it's a third party or somebody
 18 that's actually employed at Lowther?
 19 MS. SMITH: Objection; form.
 20 BY MR. VOLNEY:
 21 Q. Maybe you don't know.
 22 A. Yeah. I don't know exactly who the first contact
 23 was, but -- but I've spoken to Kate and to Samantha.
 24 Q. What is your understanding of the current status
 25 of the lawsuit?

14 (Pages 50 to 53)

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1 BY MR. VOLNEY:
 2 Q. I don't want you to speculate, so if you don't
 3 know.
 4 A. I don't know in particular.
 5 Q. Okay. Do you recall how much you paid for your
 6 phone?
 7 A. I believe my receipt was submitted, but around
 8 350 bucks.
 9 Q. Yes, it was.
 10 Is Exhibit 9 a copy of your receipt?
 11 (Exhibit 9 was marked for
 12 identification.)
 13 THE WITNESS: Yes, that's a copy of my receipt.
 14 BY MR. VOLNEY:
 15 Q. And that shows that you purchased -- I'm sorry.
 16 It shows that you purchased the phone from -- at
 17 a Radio Shack in Garden Grove on August 31st, 2010, right?
 18 A. That's correct.
 19 Q. And then it refers to this Sprint 30-day
 20 guarantee, allowing you to return the phone within 30
 21 days?
 22 A. That's correct.
 23 Q. And I take it that you did not take advantage of
 24 the 30-day return with respect to that Samsung device that
 25 you purchased?

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1 A. I did not take advantage of that 30-day
 2 guarantee.
 3 Q. Did any of the defects that you've told me about,
 4 did any of them manifest themselves before 30 days?
 5 A. I believe possibly the speakerphone issue, but I
 6 don't know in particular.
 7 Q. In any event, you didn't take advantage of the
 8 30-day return period?
 9 A. That's correct.
 10 Q. All right. Did -- before you purchased the
 11 phone, did you familiarize yourself with the Sprint
 12 subscriber agreement?
 13 A. Yeah. I believe I read the Sprint subscriber
 14 agreement before I signed on.
 15 Q. Did you -- did you try to figure out before you
 16 purchased the phone what the -- what the warranty on the
 17 phone would be?
 18 A. Not in -- not in particular, but it -- it seemed
 19 to be just a standard one-year warranty, device warranty.
 20 Nothing out of the ordinary.
 21 And that's why I felt comfortable skimming
 22 through -- you know, skimming through and understanding
 23 the contract from a -- from a quick overview standpoint
 24 rather than scouring it.
 25 Q. Okay. This particular document, Exhibit 9, it

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1 doesn't appear to me to talk about the manufacturer's
 2 warranty, does it?
 3 A. No, it doesn't. It doesn't look to refer to the
 4 manufacturer's warranty in there.
 5 Q. Did you -- before you pulled the trigger and
 6 bought the phone, did you -- did you familiarize yourself
 7 with the terms of Samsung's warranty?
 8 A. I don't think I could because the phone was in a
 9 box, and the warranty was in the box. So I was not in
 10 possession of it until -- until I had the phone in hand.
 11 Q. Okay. So did you look at the warranty after you
 12 bought the phone?
 13 A. Again, my assumption was that it was a standard
 14 one-year warranty, manufacturer warranty, you know, the
 15 same as almost any other device from Samsung, or -- or
 16 other hardware manufacturers.
 17 So I -- I did spin through the -- the user guide
 18 and possibly the warranty, but I don't -- I don't recall
 19 specifically looking at just the warranty.
 20 Q. Okay. Thank you.
 21 So when you contacted Sprint to talk to Sprint
 22 about defects with your Samsung phone, I take it you had
 23 both e-mail communications, right, with Sprint?
 24 MS. SMITH: Objection; form.
 25 THE WITNESS: Yes. I had e-mail -- e-mail and

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1 telephone conversations with Sprint.
 2 BY MR. VOLNEY:
 3 Q. All right. And when you -- when you made a phone
 4 call to Sprint, did you keep note of, I called Sprint on X
 5 day and we talked about this?
 6 A. No. I was -- I didn't keep record of that.
 7 Q. Have you reviewed any documents provided by
 8 Sprint that talk about your phone calls with Sprint?
 9 A. I -- I reviewed documents that were provided
 10 through discovery process of this.
 11 Q. Right.
 12 A. And validated that, yeah, that was me. Or it
 13 appeared as though that was the conversation, and I don't
 14 have a reason to doubt that it's incorrect.
 15 Q. Okay. So for example -- I don't want to mark
 16 this as an exhibit.
 17 A. What should I do with the exhibits here?
 18 Q. Just push them over to Angela.
 19 A. Got it.
 20 Q. She's in charge of them.
 21 Have you looked at a page like this that, at
 22 least appears to me, to -- to be an account record related
 23 to your communications with Sprint?
 24 A. Yes. Appears to be.
 25 Q. And your name shows up in here many times,

16 (Pages 58 to 61)

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1 A. I do not remember the exact date.
 2 Q. Do you know in the -- can you place it in any
 3 part of that 18-month period you owned the phone?
 4 A. Rather soon. I'm not certain, but I think one of
 5 the -- the previous exhibits, it certainly talked about
 6 it. It was rather soon on in the ownership of the phone
 7 that I had spoke to them and told them that it was
 8 crashing as well as other issues.
 9 Q. When you -- I take it that one of the strategies
 10 you used when you talked to Sprint was to threaten to
 11 cancel your service with Sprint?
 12 A. As a strategy to get more from Sprint? No. I
 13 had been very proactive working with Sprint. It was only
 14 out of frustration when -- when I was no longer able to
 15 move the ball forward with this problem, and to get some
 16 resolution to this problem because this is my -- this is
 17 my phone. This is the phone that I use every day, and I
 18 need it to work.
 19 Q. Uh-huh.
 20 A. And -- and working with Sprint all the way
 21 through the process to -- to try to remediate this -- this
 22 problem, to -- to go through and to do factory resets on
 23 the phone, to do removal of the applications one by one by
 24 one to ensure that the applications that were installed
 25 weren't causing reboot issues.

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1 It was a lot of work on my part. A lot of very
 2 high frustration at times, too, because this is happening
 3 to the -- for all intents and purposes, my lifeline to the
 4 world. It's got my e-mail and my cell and my telephone on
 5 it.
 6 So threatening is something that I don't want to
 7 do, and -- and I want to work --
 8 Q. Well, it's highly frustrating. Highly
 9 frustrating, right?
 10 You've been a Sprint customer for many years, and
 11 you've purchased this phone and it's not working properly,
 12 and it's agitating, right?
 13 A. That's correct.
 14 Q. Totally get it.
 15 I take it Exhibits 10 and 11 are the only two
 16 written records you have of your communications with
 17 Sprint?
 18 A. As far as I know, yes.
 19 Q. All right. You -- you told me before that you
 20 called Samsung on perhaps two occasions?
 21 A. Yes.
 22 Q. Do you recall who you spoke to at Samsung?
 23 A. I do not, no.
 24 Q. Do you know the number you called?
 25 A. I don't know offhand.

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1 Q. Do you have -- did you dial Samsung from your
 2 Samsung -- Samsung Epic 4G?
 3 A. I don't know.
 4 Q. Is it -- do you have your billing statements for
 5 your Sprint account from the 2010/2011 time period?
 6 A. I don't have them. I don't keep the billing
 7 records. I shred them.
 8 Q. So if we wanted to get copies of your billing
 9 records to determine if you called Samsung from your
 10 Samsung phone, we'd have to get those from Sprint?
 11 A. I believe so, yes. I would defer to counsel on
 12 that too.
 13 Q. Okay. Now do you recall who you spoke to at
 14 Samsung?
 15 A. No, I do not.
 16 Q. Do you recall what time of day you called?
 17 A. I would be guessing, but no, I don't recall.
 18 Q. Do you recall whether you gave any identifying
 19 information to the person you spoke with?
 20 A. Only that I was a customer of -- of -- you know,
 21 I had a Samsung device. I had an Epic 4G.
 22 Q. Did you tell them that you were -- did you say --
 23 well, I guess my question is were you asked by the Samsung
 24 representative your name or some other identifying
 25 information so the call could be tracked?

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1 A. I may have, but I don't remember if -- if I -- I
 2 don't know if I provided that information or exactly what
 3 the conversation was.
 4 Q. Certainly if they'd asked for that information,
 5 you would have given it?
 6 A. Yes. I have no reason to not give that to them.
 7 Q. What -- do you recall any details of your
 8 conversations with Samsung?
 9 A. The -- the details that I remember were -- were
 10 basically call Sprint; that they -- that they handle
 11 the -- they handle the phone, and you now, call Sprint.
 12 Call Sprint's technical service.
 13 Q. When you called Samsung, what particular issues
 14 were you attempting to get resolved?
 15 A. I was -- I was at the end of -- well, not at
 16 the -- well, I was frustrated through the process of
 17 dealing with Sprint and not finding resolution through
 18 that.
 19 And I don't recall if I was directly -- I do want
 20 to say that I was directly directed to contact Samsung,
 21 but I don't recall exactly if I -- if I was or not, so --
 22 I was very frustrated with the phone and very
 23 frustrated with the process with Sprint, and really my
 24 only way to -- to find a way to, you know, maybe throw a
 25 Hail Mary pass and find something from the manufacturer.

20 (Pages 74 to 77)

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1 That's when I called Samsung.
 2 And then I was --
 3 Q. So your view was --
 4 A. And then I was deferred back to Sprint.
 5 Q. Do you recall what specific words the Samsung
 6 representative you spoke to used?
 7 A. No. I don't recall the exact communication.
 8 Q. Your recollection is that that person told you to
 9 get in touch with Sprint?
 10 A. That's correct.
 11 Q. And sitting here today, do you know what specific
 12 problems you identified to the Samsung representative?
 13 A. Let's see. I -- I don't -- I don't recall the
 14 entire conversation. I recall being directed back to
 15 Sprint.
 16 Again, I think I'd be guessing if I was to tell
 17 you what -- what I believe was in that communication, but
 18 my understanding would be that -- that it was the freezing
 19 and -- I don't know exactly when the time frame was, but
 20 it -- I was having issues with the freezing and the
 21 rebooting, but also as part of that, the rebooting sitting
 22 on the table is pretty much the last straw.
 23 And I think that was about the same time that I
 24 contacted Samsung.
 25 Q. All right. Now did you ever go back and look at

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1 the written warranty provided to you by Samsung?
 2 A. No. Again, I was under the -- and still am under
 3 the assumption that it's a standard one-year warranty,
 4 and -- and that I was dealing with Sprint on this issue.
 5 Q. And we have to change the tapes, so I'm going to
 6 change the topic. So let's change the tape.
 7 A. Sure.
 8 THE VIDEOGRAPHER: This will end Disk 2 in the
 9 deposition of Brian Newbold, and at 2:47 we're off the
 10 record.
 11 (Recess.)
 12 THE VIDEOGRAPHER: At 2:56 we're back on the
 13 record with Disk 2 of the deposition of Brian Newbold.
 14 Counsel, after you.
 15 (Exhibit 12 was marked for
 16 identification.)
 17 BY MR. VOLNEY:
 18 Q. Mr. Newbold?
 19 A. Uh-huh.
 20 Q. I've marked for identification as Exhibit 12
 21 certain documents that were produced to me by your
 22 counsel.
 23 Could you tell us what those documents are?
 24 A. They appear to be screen grabs of the Google Play
 25 store which lists applications that either are currently

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1 or were previously installed on the Android phone.
 2 Q. Okay. So how do I -- I take it you have two
 3 phones, an Acer 8500 and a Sprint Samsung SPHD 700, right?
 4 A. That's incorrect. The Acer 8500 is an Android
 5 tablet device, a standard operating system that uses the
 6 Google Play store.
 7 The Sprint Samsung SPH and the cutoff I think is
 8 700, yeah D700, that is the phone. And it shows the bold
 9 underline. It should be consistent through all of these
 10 different pages here.
 11 Q. Yes, sir.
 12 Were these screen grabs taken at different times?
 13 A. No. All at the same time.
 14 I believe I was the one that did the screen grabs
 15 and -- and clicked through the different pages. It's --
 16 Q. Basically eight different pages of screen grabs?
 17 A. That's correct.
 18 Q. How can I tell if a particular app is on -- is
 19 installed or, for lack of a better word, dormant?
 20 A. I don't know offhand.
 21 Q. And when did you do this screen grabbing
 22 exercise?
 23 A. At the request of counsel.
 24 Q. Was that relatively recently, or --
 25 A. I believe that was over the summer. I don't know

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1 exactly, though.
 2 Q. So when you went to purchase your replacement
 3 phone, which you also -- is it also on Sprint?
 4 A. No. AT&T.
 5 Q. So you couldn't trade in your Epic 4G to get the
 6 iPhone, I take it?
 7 A. That's correct.
 8 Q. All right. So you didn't get any credit for
 9 that?
 10 A. That's correct.
 11 Q. Let me ask a better question.
 12 You didn't get any credit for the Epic 4G when
 13 you purchased your iPhone?
 14 A. That's correct.
 15 Q. All right. Thank you.
 16 Now back to your conversation with Samsung, did
 17 the Samsung rep tell you to send your phone in to Samsung
 18 to be repaired or replaced?
 19 A. No. The Samsung rep directed me back to Sprint.
 20 Q. By the time you called the Samsung rep, had you
 21 rooted the phone?
 22 A. No.
 23 Q. Rooting occurred some time later?
 24 A. That's correct.
 25 Q. All right. Angela has an exhibit for us,

21 (Pages 78 to 81)

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<p>1 Exhibit 1.</p> <p>2 A. Exhibit 1.</p> <p>3 Q. Yeah. So Exhibit 1 is a copy of the complaint</p> <p>4 that you filed and tells the world what your claims are</p> <p>5 about.</p> <p>6 But I want to turn to Page 47. If you look at</p> <p>7 the upper right-hand corner.</p> <p>8 A. Page 47, where it's stating Samsung Fascinate?</p> <p>9 Q. Right. So I understand you don't have a</p> <p>10 Fascinate, but --</p> <p>11 A. That's correct. But I do have a Galaxy S phone.</p> <p>12 Q. And furthermore, I think the warranties are not</p> <p>13 different in any respect between the Fascinate and the --</p> <p>14 A. I don't know.</p> <p>15 Q. Well, yeah. Okay.</p> <p>16 I wanted to talk a little bit about the standard</p> <p>17 limited warranty that's provided by Samsung for its</p> <p>18 Galaxy S phone, and I want to direct you to Page 49.</p> <p>19 A. Page 49.</p> <p>20 Q. Right. And particularly the paragraph that talks</p> <p>21 about Samsung's obligations.</p> <p>22 A. "What Are Samsung's Obligations." Okay.</p> <p>23 Q. Let me just ask you some sort of foundational</p> <p>24 questions first.</p> <p>25 Did you ever go back and look at the warranty and</p>	<p>1 to purchaser, any defective component</p> <p>2 part of the product.</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. And then it goes on to say that, (as read):</p> <p>6 To obtain service under this limited</p> <p>7 warranty, purchaser must return product</p> <p>8 to an authorized phone service facility</p> <p>9 in an adequate container for shipping,</p> <p>10 accompanied by purchaser's sale and</p> <p>11 receipt of comparable and substitute</p> <p>12 proof of sale showing the original date</p> <p>13 of purchase, the serial number of</p> <p>14 product, and the seller's name and</p> <p>15 address.</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Now I take it you will agree with me that you did</p> <p>19 not return the phone to Samsung --</p> <p>20 MS. SMITH: Objection; form.</p> <p>21 BY MR. VOLNEY:</p> <p>22 Q. -- for repair or replacement under the warranty?</p> <p>23 A. No. I did not return the phone to Samsung.</p> <p>24 Q. Okay. And in fact, you didn't return the phone</p> <p>25 to Sprint for Sprint to give you a repair or replacement</p>
Page 83	Page 85
<p>1 try to figure out how to get warranty service from</p> <p>2 Samsung?</p> <p>3 A. No. I never went back to -- to figure out how to</p> <p>4 get warranty service from Samsung.</p> <p>5 Q. And you understand that in connection with your</p> <p>6 lawsuit, at least one of the claims you're making is that</p> <p>7 Samsung failed to live up to its warranty.</p> <p>8 You understand that?</p> <p>9 A. Yes. I understand that.</p> <p>10 Q. Now in order to determine whether Samsung lived</p> <p>11 up to its warranty, one of the things we'd have to do is</p> <p>12 figure out what the warranty says, right?</p> <p>13 A. True.</p> <p>14 Q. Is that fair?</p> <p>15 A. That's fair.</p> <p>16 Q. Okay. Now looking at the warranty, this is where</p> <p>17 the rubber meets the road on the warranty claim in my</p> <p>18 view.</p> <p>19 Samsung tells you in the warranty -- and I'm</p> <p>20 looking at the first sentence of the paragraph marked</p> <p>21 "What Are Samsung Obligations."</p> <p>22 Samsung says, (as read):</p> <p>23 During the applicable warranty</p> <p>24 period, Samsung will repair or replace,</p> <p>25 at Samsung's sole option, without charge</p>	<p>1 phone, correct?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: I never relinquished the phone to</p> <p>4 Sprint. However, I went to Sprint to what my</p> <p>5 understanding was an authorized -- an authorized service</p> <p>6 center. In fact, I live down the road from one of the</p> <p>7 primary Sprint stores for the Orange County region where</p> <p>8 they do have onsite repair and all of the other stuff.</p> <p>9 So I have been into the Sprint store and have</p> <p>10 handed my phone over to the Sprint representatives to --</p> <p>11 and discuss the phone at length to see if we could figure</p> <p>12 out what the problem was.</p> <p>13 BY MR. VOLNEY:</p> <p>14 Q. Did you ever allow them to keep the phone to</p> <p>15 repair it or allow them to replace the phone?</p> <p>16 A. It -- we -- I didn't --</p> <p>17 MS. SMITH: Objection; form.</p> <p>18 THE WITNESS: Sorry.</p> <p>19 MS. SMITH: Go ahead.</p> <p>20 MR. VOLNEY: Sorry. I've asked you two questions</p> <p>21 I think that's why she keeps objecting. There's a number</p> <p>22 of reasons she probably objected.</p> <p>23 BY MR. VOLNEY:</p> <p>24 Q. Did you allow the folks at the Sprint store to</p> <p>25 repair your phone?</p>

22 (Pages 82 to 85)

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1 MS. SMITH: Objection; form.
 2 THE WITNESS: They never requested to keep the
 3 phone. They -- they have -- if I remember correctly, they
 4 did a factory reset on the phone onsite, but nothing else
 5 was done.
 6 BY MR. VOLNEY:
 7 Q. Did you ever ask the Sprint people to replace
 8 your phone?
 9 A. Yes. I've asked Sprint to replace my phone with
 10 a working phone.
 11 Q. And did they refuse to replace the phone?
 12 A. Yes. In fact, I believe it was even referenced
 13 in one of the previous exhibits.
 14 Q. That they -- let's look at -- where is that? I
 15 didn't see that.
 16 In Exhibit 10 or 11?
 17 A. By virtue of it being out of warranty. Let's
 18 see. In Exhibit 10.
 19 Q. Right.
 20 A. On Page 11. What I'm referring to is a
 21 communication from Derrick Ross, (as read):
 22 Sprint offers you 30 days to ensure
 23 that you have -- that you and your new
 24 device are a sure fit.
 25 As you have had your device for

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1 greater than 30 days, you can purchase a
 2 newer device, but only at your eligible
 3 price.
 4 Q. Well, were you --
 5 A. And -- all right.
 6 Q. Right.
 7 A. On Exhibit 11 --
 8 Q. Yep.
 9 A. Last page, Page 25 in Exhibit 11, the very last
 10 paragraph, (as read):
 11 Can anyone at Sprint own this issue
 12 and let me swap out this POS for
 13 something else? I'd even trade for one
 14 of the Nexus S phones. I hear you're
 15 getting a lot -- getting a lot of those
 16 back. I just don't want this crappy,
 17 not-so-epic phone anymore.
 18 So there's my request to them to -- to replace
 19 that phone with something that's workable.
 20 And Derrick Ross's response back in Exhibit 10,
 21 of course, is that it's outside of the warranty period and
 22 they cannot do so.
 23 Q. Well, I don't want to quibble with you, but you
 24 told me that you understood the phone had a one year
 25 warranty, right?

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1 A. Yes.
 2 Q. So January 2011 is really within the one year
 3 from the date of purchasing the phone, correct?
 4 A. Yes.
 5 Q. Is it that what you're asking him is to switch to
 6 a different phone altogether and he's refusing that, that
 7 he's telling you?
 8 A. To -- as we had come to the end of the rope with
 9 fixing this phone, finding some kind of solution to the
 10 issues, the only way to -- to really ultimately solve the
 11 problem is to get rid of the device and move on to the
 12 next phone. Whether that's at Sprint's discretion or
 13 mine, it's -- it's the only way to eliminate the problem.
 14 Q. Well, I mean I understand that you got to the end
 15 of your rope, but I think it's fair to say that -- I mean
 16 you've testified you never relinquished the phone to
 17 anyone, whether it was Sprint, or Samsung, or a third
 18 party for the phone to be repaired; is that right?
 19 A. That's -- that's correct. Uh-huh.
 20 Q. And when you contacted Sprint about replacing the
 21 phone, what you wanted to do was to replace it with a
 22 different model of phone altogether?
 23 MS. SMITH: Objection; form.
 24 BY MR. VOLNEY:
 25 Q. Right?

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1 A. With a -- a working phone, yes.
 2 Q. Well, not just a working phone, just a different
 3 working phone?
 4 A. A different working phone under the assumption
 5 that the same issues would be present in a replacement
 6 phone of like kind. If -- if I was given an Epic 4G as a
 7 replacement, the -- I was -- I was satisfied with leaving
 8 that phone. And my understanding of the phone was that
 9 the issues were core to the phone itself.
 10 And -- and seeing -- and just the use of the
 11 phone was -- was a mess, and other people complaining,
 12 the -- the class body that I'm representing now. People
 13 talking about the -- the phone and -- and experiencing the
 14 same issue. I had no reason to believe that I would have
 15 a working phone if they replaced it with another Epic 4G.
 16 Q. Well, to be fair, Mr. Newbold, you never gave
 17 Samsung or Sprint the opportunity to either repair or
 18 replace your Epic 4G with another Epic 4G, correct?
 19 MS. SMITH: Objection; form.
 20 THE WITNESS: Had they requested that, I likely
 21 would have given them my phone.
 22 BY MR. VOLNEY:
 23 Q. Well, if we look at the warranty itself, it puts
 24 some burden on you as the purchaser to return the phone to
 25 Samsung so it can be repaired or replaced, right?

23 (Pages 86 to 89)

BRIAN NEWBOLD**11/13/2013**

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1 A. I would say yes, with the clarification that it's
2 Samsung or its authorized resellers or service providers,
3 or service centers, and Sprint being one, and that being
4 the one that I was directed to deal with.

5 Q. Let's -- let's talk a little bit about that last
6 statement you made.

7 How is it that you concluded that Sprint was an
8 authorized phone service facility for Samsung?

9 A. Well, the assumption that they would have a
10 repair facility, and the assumption that they would act
11 professionally and have all the authorizations that they
12 need from the individual hardware manufacturers.

13 Also through the assumption that Samsung would
14 not redirect me to Sprint in that case if they were not
15 authorized.

16 Q. Now if the warranty says that Samsung will, at
17 its -- well, strike that. Let me ask a different
18 question.

19 The -- and I think I've asked this question
20 before, I just want to make sure I have a clear answer on
21 the record.

22 A. Sure.

23 Q. I'm beating you up a little bit about this, and
24 this is important to me, and she has her reasons why it's
25 not important.

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1 A. No, I understand.

2 Q. That's all for the Court to decide.

3 Even if you assume that Sprint is an authorized
4 phone service facility, which is what you've told me that
5 you understood to be the case, right?

6 A. Uh-huh.

7 Q. You never relinquished your phone to Sprint for
8 it to be repaired or replaced, right?

9 MS. SMITH: Objection; form.

10 THE WITNESS: I never relinquished my phone to
11 them to repair or replace it overnight; however, they
12 have -- they have had my phone and -- and took it back to
13 their service bay.

14 So in that case, yes, I have relinquished my
15 phone to them for the short time that they looked at it
16 and handed it back, factory reset.

17 BY MR. VOLNEY:

18 Q. How long did that appointment take?

19 A. I don't know offhand. Maybe -- I believe it was
20 an hour, maybe two hours.

21 Q. Did you ask them in connection with that to
22 repair the -- any issues that were related to the
23 hardware?

24 A. The -- the representatives that -- that I was
25 working with -- and I do not recall who I was working with

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1 in particular because it had been different people -- the
2 issues at hand were fully discussed with them. The issues
3 especially at the moment, but I believe -- yeah, I don't
4 know.

5 MR. VOLNEY: Okay. Do you have anymore exhibit
6 tabs?

7 THE REPORTER: I do.

8 THE VIDEOGRAPHER: Can you move a couple inches
9 that way, please.

10 BY MR. VOLNEY:

11 Q. What is it that you want to get out of this
12 lawsuit?

13 MS. SMITH: Objection; form.

14 BY MR. VOLNEY:

15 Q. Give me a wish list.

16 A. Yeah. Give you my wish list. It is the
17 Christmas season, isn't it?

18 No. Actually I -- what do I want out of this?
19 I'd like Samsung -- Sprint, Samsung, whoever, to take
20 responsibility, and particularly here Samsung to take
21 responsibility for the hardware that they provided, and
22 to -- and to make good on -- on selling me a -- a piece of
23 hardware which is supposed to be good and supposed to --
24 to uphold the good name of Samsung, and it ended up being
25 a bad product. I want Samsung to take responsibility

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1 for -- for that.

2 Q. Do you know whether your lawyers contacted
3 Samsung to obtain warranty service for your Samsung phone?

4 MS. SMITH: Objection; form.

5 THE WITNESS: I do not know if they contacted
6 Samsung.

7 BY MR. VOLNEY:

8 Q. Do you know whether Samsung volunteered to repair
9 or replace the phone pursuant to the warranty?

10 A. I -- I don't know the internal communication
11 between counsel and Samsung.

12 Q. If Samsung had repaired or replaced your phone
13 within one year of your purchase date and the phone was
14 working, do you think you'd have a claim?

15 MS. SMITH: Objection; form.

16 THE WITNESS: I -- I do not know.

17 BY MR. VOLNEY:

18 Q. I mean if -- they are under the warranty. And
19 let's just assume for the sake of my question that you got
20 a lemon.

21 MS. SMITH: You got a what?

22 MR. VOLNEY: A lemon.

23 MS. SMITH: Oh, a lemon.

24 MR. VOLNEY: Like a lemon phone.

25 MS. SMITH: Gotcha.

24 (Pages 90 to 93)

Exhibit YYY.

RICHARD TALIAFERRO

COPY

11/13/2013

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SHANE GALITSKI, RICHARD TALIAFERRO
and BRIAN NEWBOLD, Individually
and on Behalf of All Others Similarly
Situated,

Plaintiffs,

vs.

No. 3:12-CV-4782-D

SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC,

Defendant.

DEPOSITION OF RICHARD TALIAFERRO

San Diego, California

Wednesday, November 13, 2013
Volume I

Reported by:
ANGELA METZ
CSR No. 12454

JOB No. 10185

PAGES 1 - 90

RICHARD TALIAFERRO**11/13/2013**

Page 6

1
2 **RICHARD TALIAFERRO,**
3 having been first duly sworn, was examined and testified
4 as follows:

EXAMINATION**BY MR. VOLNEY:**

9 Q. Good morning. My name is John Volney.
10 Mr. Taliaferro, do you understand that I represent Samsung
11 Telecommunications of America, LLC?

12 A. Yes, I do.

13 Q. And that's in connection with a class action
14 lawsuit that -- in which you are one of the proposed class
15 representatives?

16 A. Yes.

17 Q. Could you state your full name for the record,
18 please?

19 A. Richard Lawrence Taliaferro.

20 Q. Mr. Taliaferro, would you tell us what your
21 address is?

22 A. [REDACTED]
23 [REDACTED]

24 Q. Have you ever been a party to a lawsuit before?

25 A. Other than a divorce?

Page 8

1 would you please let me know?

2 A. I will.

3 Q. And if you answer my question, I'm going to
4 assume that you understood it, correct? Okay?

5 A. Correct.

6 Q. Now, finally, you understand that you're --
7 although we're here in this office in San Diego, you
8 understand your testimony today is just as if you were
9 testifying before the judge and the jury in this case.

10 Do you understand that?

11 A. Yes, I do.

12 Q. Okay. I don't think this will be a problem, but
13 in connection with the deposition it's going to be really
14 hard for our court reporter to take down the questions and
15 answers if we talk over each other. So if you'll just
16 give me a chance to finish my question before you begin
17 your answer, it will make the process a lot easier. Okay?

18 A. Yes. And also not to even acknowledge before
19 you're done speaking?

20 Q. That's fine.

21 A. Yes.

22 Q. Now, is there any reason why you can't testify
23 fully and truthfully today?

24 A. No.

25 Q. In other words, you're not on any medications or

Page 7

1 Q. No. Well, other than your divorce, no?

2 A. Not to my recollection.

3 Q. Have you ever given a deposition before?

4 A. Yes.

5 Q. Okay. Could you tell me in connection with what?

6 A. Things with worker -- I have a workers' comp case
7 right now.

8 Q. You are -- let me back up. You're the injured
9 worker?

10 A. Yes.

11 Q. Okay. So you currently have a workers' comp case
12 pending?

13 A. Correct.

14 Q. And you've given a deposition in that case?

15 A. Yes.

16 Q. So you know basically how this process works?

17 A. Yes, I'm familiar with the process.

18 Q. You understand that I'm going to be asking you a
19 number of questions about your allegations in the case,
20 correct?

21 A. Correct.

22 Q. And you understand it's your obligation to answer
23 those questions truthfully?

24 A. Yes.

25 Q. Now, if you don't understand one of my questions,

Page 9

1 have any health problems?

2 A. [REDACTED]
3 [REDACTED]

4 Q. Okay. Tell me, what did you do to get ready for
5 your deposition?

6 A. I reviewed the complaint that I filed.

7 Q. When did you do that?

8 A. Yesterday.

9 Q. With whom did you meet to review the complaint?

10 A. Ms. Smith and Ms. DiDonato.

11 Q. Was that here in Doyle Lowther's offices?

12 A. Yes.

13 Q. How long did you spend?

14 A. Couple hours. I don't know the exact amount of
15 time.

16 Q. Was this the -- was yesterday the first time you
17 had seen the complaint?

18 A. No.

19 Q. When did you see it first?

20 A. I'd say early 2010.

21 Q. Did you review the complaint before it was filed?

22 A. Yes.

23 Q. Did you have input into the complaint before it
24 was filed?

25 A. Input as to?

3 (Pages 6 to 9)

RICHARD TALIAFERRO**11/13/2013**

Page 10

1 Q. The facts or the claims asserted?
 2 A. Yeah, I had input into the -- it was my
 3 complaint, if that answers your question.
 4 Q. Okay. Tell me what your -- what is your
 5 educational background?
 6 A. I have a GED. I had a -- a contractor's license
 7 with the State of California as a contractor and a timber
 8 harvest license, journeyman operating engineer and grade
 9 setter. I hold no diploma.
 10 Q. No college diploma, but have worked in -- it
 11 appears you have worked in construction-related jobs for
 12 your career?
 13 A. Most of my life, yeah. Construction and truck
 14 driving.
 15 Q. What do you currently do?
 16 A. [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 Q. What's the charity you work for?
 20 A. [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 Q. Are you a Spanish speaker?
 24 A. No.
 25 Q. I have to ask this, but don't take offense at it.

Page 12

1 three months after I started with Gordon Trucking, my
 2 current employer. I was given notice that I was a member
 3 of that suit and I declined to participate.
 4 Q. Okay. So you were a member of the class?
 5 A. Correct.
 6 Q. And you opted out?
 7 A. I just didn't respond.
 8 Q. Didn't respond. What was the nature of the
 9 lawsuit?
 10 A. Nature of the lawsuit had to do with violations
 11 of California labor law and I and my co-driver discussed
 12 it and we just decided that since we had only been there
 13 for a few months, we didn't really feel that we should
 14 pursue that.
 15 Q. Okay. So let me back up. You're current
 16 employer is Gordon Trucking, correct?
 17 A. Technically, yeah.
 18 Q. [REDACTED]
 19 A. Yeah. That -- let me clarify that, if I may.
 20 Q. Sure?
 21 A. [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 11

1 Have you ever been convicted of a felony before?
 2 A. No, I have not.
 3 Q. Have you ever served as a class representative in
 4 connection with a lawsuit before?
 5 A. Not to my knowledge -- let me back up to your
 6 original question on that. I was involved in some small
 7 claims actions? Is that -- when you asked me before if
 8 I've ever been --
 9 Q. Small claims actions where you were suing or
 10 being sued?
 11 A. Both.
 12 Q. All right. And this --
 13 A. I just wanted to clarify that, because it just
 14 occurred to me that -- but go ahead. Proceed.
 15 Q. Those are types of lawsuit, I understand. But
 16 mainly just collection disputes?
 17 A. Yeah.
 18 Q. Okay. But you're -- sitting here today, you
 19 don't believe you've ever served as a class representative
 20 in a class action lawsuit before?
 21 A. No.
 22 Q. Have you ever been a member of a class action
 23 lawsuit?
 24 A. I was named with the company I currently work
 25 for. I don't have an exact date for you, but it was about

Page 13

1 work.
 2 Do you understand that?
 3 Q. I got it. I understand.
 4 A. Okay.
 5 Q. And Gordon Trucking is located where?
 6 A. Pacific, Washington, is the main office.
 7 Q. So when you were a -- were you a long haul truck
 8 driver for Gordon?
 9 A. Both. In the beginning I was long haul and
 10 towards the end we had a regional route from California to
 11 Oregon.
 12 Q. What types of things do you haul or did you haul?
 13 A. It was a wide variety of freight, just general --
 14 what was called freight.
 15 Q. Okay. Let me ask you some questions about how
 16 you came to be a class representative in this lawsuit.
 17 And I guess my first question is, who is it that -- is it
 18 the Doyle Lowther firm that represents you in this case?
 19 A. That's my understanding.
 20 Q. And do you have a written engagement agreement
 21 with Doyle Lowther?
 22 A. I believe I do.
 23 Q. Have you -- are there any other lawyers in your
 24 understanding who represent you in this case?
 25 A. Not outside of the law firm of Doyle Loather.

4 (Pages 10 to 13)

RICHARD TALIAFERRO**11/13/2013**

Page 14

1 Q. Okay. I see some other law firms on your
2 pleading, including the Glen Law Group and the Consumer
3 Law Group, and the lawyers are Thomas Glen for the Glen
4 Law Group and Alan Mansfield from the Consumer Law Group.
5 Do you have any understanding of whether they are your
6 lawyers?
7 A. I believe I did meet with Thomas.
8 Q. When did you meet with him?
9 A. Over the phone when I first filed the Complaint.
10 Q. Okay. Have you met -- ever met with Alan
11 Mansfield?
12 A. I may have spoken with him on the phone.
13 Q. Do you know if you have an engagement agreement
14 with either Thomas Glen or Alan Mansfield?
15 A. I'm really not certain on that.
16 Q. All right. I assume you haven't met Marc
17 Stanley, Martin Woodward or Scott Kitner of the Stanley
18 Iola firm, correct?
19 A. I haven't met anybody until yesterday.
20 Q. Until yesterday.
21 A. I haven't met anybody in person.
22 Q. Okay. So your first face-to-face meeting with
23 your lawyers in this case occurred yesterday?
24 A. Correct.
25 Q. And that was with Ms. DiDonato and Ms. Smith?

Page 15

1 A. Correct.
2 Q. Before that, was your communication with them via
3 telephone?
4 A. Yes.
5 Q. Was it also via e-mail?
6 A. Yeah, I believe there may have been some e-mail
7 communications.
8 Q. So you have a personal e-mail address through
9 which you communicate with your lawyer?
10 A. Yeah. I believe so, yeah. Most of the
11 communications have been through mail and phone calls.
12 Q. All right. How is it that you got in touch with
13 the Doyle Lowther firm?
14 A. Well, when I -- after multiple attempts to
15 resolve the issue of the phone not working correctly, I
16 found -- I was researching it on the Internet and I --
17 after seeing hundreds of complaints, I found a statement
18 by this law firm stating if you have bought one of these
19 phones, they may have been defective. And I contacted
20 them immediately.
21 Q. So you responded to something you saw on Doyle
22 Lowther's website?
23 A. Whether it was on their website or whether it was
24 just on the Internet, I can't recall.
25 Q. Okay. Did you have -- I take it -- well, let me

Page 16

1 ask an open-ended question. Before you responded to the
2 -- what you saw on the Internet from the Doyle Lowther
3 firm, had you had any prior contact with the Doyle Lowther
4 firm?
5 A. No.
6 Q. That was your first introduction to them?
7 A. Yeah.
8 Q. Did you talk to any other law firms about
9 potentially bringing a lawsuit against Samsung?
10 A. Not to my knowledge. Although you did bring up
11 the other two firms, and I guess they're in the same
12 building and I'm unclear on that.
13 Q. But they appear to have the same at least street
14 address as where we're sitting today --
15 A. Right.
16 Q. -- 10200 Willow Creek Road in San Diego?
17 A. Correct.
18 Q. All right. So I take it after you responded to
19 the information on the Internet then that's when you
20 became a client of the Doyle Lowther firm?
21 A. Correct.
22 Q. Tell me -- you told me earlier that you've never
23 served as a class representative before in connection with
24 a lawsuit. Can you tell me what your understanding is of
25 what your duties are as a class representative?

Page 17

1 A. Yeah, my duties are to represent the class and to
2 stay informed and follow the case.
3 Q. How are you staying informed about the case?
4 A. I stay in contact with usually Kate DiDonato
5 about once a month by phone, and they mail me whatever
6 information is pertinent and new.
7 Q. And I take it that's also how you follow what's
8 going on in the case?
9 A. Yeah.
10 Q. Do you know what the current status of the case
11 is?
12 A. Yeah, it's in discovery.
13 Q. Do you know where the case is currently pending?
14 A. Richardson, Texas, is it?
15 Q. Close enough. Dallas, Texas, Northern District
16 of Texas.
17 A. Right.
18 Q. You understand that it was first filed -- well,
19 never mind.
20 A. It's moved a bit.
21 Q. It's moved a bit. I think we can agree on that.
22 Are -- as the class representative, are you
23 expecting to get any extra compensation for your service?
24 A. I don't -- I never really gave it that much
25 thought.

5 (Pages 14 to 17)

RICHARD TALIAFERRO**11/13/2013**

Page 18

1 Q. In other words, you're not expecting a bonus for
2 being the class representative?
3 A. No, I don't expect anything.
4 Q. And I take it so far in connection with your
5 service as class representative, you have not received any
6 compensation from anyone?
7 A. No.
8 Q. All right. Were you involved in any way as to
9 the decision making related to which parties were to be
10 sued as defendants in the case?
11 A. Can you repeat that.
12 Q. Yes. Were you involved in any way in the
13 decision -- decision making related to which parties would
14 be sued as defendants in the case?
15 A. I don't believe I was involved in that.
16 Q. In other words, my understanding from looking at
17 the complaint is you were a customer of Verizon?
18 A. Correct.
19 Q. And you purchased your phone from a Fry's
20 Electronics store?
21 A. The original phone in question, yes.
22 Q. The original phone?
23 A. Yeah.
24 Q. Were you involved in any of the decision making
25 related to deciding not to sue either Fry's or Verizon?

Page 20

1 Q. So as a class representative in the lawsuit, you
2 have an understanding, sitting here today, that you are
3 wanting to represent a class of people?
4 A. I do understand that, yes.
5 Q. Okay. Do you have an understanding of who is in
6 that class? What -- well, who is in the class that you
7 want to represent?
8 A. It's my understanding that the people that I
9 represent are those who have purchased the phone that was
10 found to be defective. Does that answer your question?
11 Q. That answers my question, but let me ask a few
12 follow-up questions. Which phone?
13 A. The Samsung Galaxy S, I believe. There were
14 multiple names by multiple carriers. The one I had was
15 the Fascinate, but there were numerous phones of various
16 types that all had the same software and hardware.
17 Q. Well, to be fair, you don't have any personal
18 knowledge about whether those models of the Galaxy S as
19 between particular carriers have the same software and
20 hardware, correct?
21 A. Well, in the research that was done, it was
22 fairly clear that it is the same phone. As to my
23 understanding, it's exactly the same phone with a
24 different name on it.
25 Q. Tell me what research you're talking about.

Page 19

1 A. I don't know that I was involved, other than just
2 it was discussed. The phone was made by Samsung, so --
3 MS. SMITH: I'm just going to pause and remind
4 you that anything that we discuss is privileged, and
5 that's not what he's asking about.
6 THE WITNESS: Okay. So was I involved in -- let
7 me repeat the question to make sure that I understand it.
8 Was I directly involved in choosing who to sue? Is that
9 what you're asking?
10 BY MR. VOLNEY:
11 Q. That's what I'm asking.
12 A. I don't believe so.
13 Q. Tell me, do you know, sitting here today, who is
14 in the class that you want to represent as a class
15 representative?
16 A. Yes.
17 MS. SMITH: Objection; form.
18 THE WITNESS: Objection to form?
19 MS. SMITH: So I'm going to make some objections
20 on the record, but unless I tell you not to answer, you
21 can still answer the question.
22 THE WITNESS: Okay. Can you repeat the question.
23 BY MR. VOLNEY:
24 Q. Okay. Let me build up to it.
25 A. Okay.

Page 21

1 A. It is in the complaint and in some of the briefs
2 that specifically state it.
3 Q. No, I'm not -- just trying to drill down to what
4 you know versus what's in the complaint. And I take it
5 you personally have not done any research to determine
6 whether the Fascinate versus AT&T's model or Sprint's
7 model have the same software and hardware, correct?
8 A. I haven't personally done any of the research,
9 no.
10 Q. Okay. Have you seen any research records
11 prepared by any third parties that state that those models
12 of the Galaxy S have the same software and hardware?
13 MS. SMITH: Objection; form.
14 THE WITNESS: Other than just complaints from
15 other people stating that on the Internet, of which there
16 are thousands of complaints.
17 BY MR. VOLNEY:
18 Q. Where did you look on the Internet for
19 complaints?
20 A. I just Googled it. I typed in "problems with
21 Fascinate" and "Samsung Fascinate" and that came up, that
22 produced a whole lot of different -- I mean, page upon
23 page upon page of complaints in different forms.
24 Q. All right. Now, correct me if I'm wrong, but I
25 assume that the Galaxy S Fascinate, which -- well, let's

6 (Pages 18 to 21)

RICHARD TALIAFERRO**11/13/2013**

Page 34

1 for you to have to be able to use Google Maps while you
2 were driving your truck in places where you had never been
3 before?

4 A. Yes, that's accurate.

5 Q. And did you use like a bluetooth device or how
6 did you -- did you use the hands-free function while you
7 were driving your truck?

8 A. If I was going to be making phone calls.

9 Q. Yeah. What kind of device did you use to do
10 that?

11 A. I can't recall the exact type of device. It's an
12 earpiece.

13 Q. It's like a little wireless earpiece you stick in
14 your ear?

15 A. Yeah.

16 Q. That connects via magic to the phone, whatever
17 the magic is, the bluetooth technology?

18 A. I believe so, yeah.

19 Q. Was the Fascinate your -- was it -- well, let me
20 ask some background questions first. How long did you
21 have the Fascinate?

22 A. To the best of my knowledge, about a year.

23 Q. What did you replace it with?

24 A. I believe the Droid Charge.

25 Q. Who was the manufacturer of the Droid Charge?

Page 35

1 A. I believe that may have been Samsung.

2 Q. How long was it before you started having
3 problems with the Fascinate?

4 A. About a month.

5 Q. About a month? And what were the types of
6 problems that you were having?

7 A. It would freeze up. When in navigation mode, I
8 would think it was actually telling me where to go and I
9 would discover that it was no longer working. I would
10 think it was on and in sleep mode and try to turn it on
11 and it was off.

12 Q. Okay. So I want to understand. You're driving
13 your truck, the Fascinate is attached in some fashion to
14 your windshield, right?

15 A. Or the dashboard, yeah.

16 Q. Or the dashboard. And it's supposed to be
17 telling you where to go?

18 A. Yeah.

19 Q. And then you're using Google Maps --

20 A. Right.

21 Q. -- as your navigation program?

22 A. Correct.

23 Q. Does that Google Maps come with the cell phone or
24 did you have to download it off the Internet?

25 A. I can't recall.

Page 36

1 Q. And while you were driving, tell me and the court
2 exactly what would happen to the phone.

3 MS. SMITH: Objection; form.

4 THE WITNESS: It would stop working, it would
5 freeze up. In other words, when you're navigating --
6 BY MR. VOLNEY:

7 Q. Right.

8 A. -- there's a picture of a highway with a blue dot
9 representing your vehicle, and it just would cease to
10 work. I mean, you would think it was navigating and then
11 it would no longer be working, it was frozen up. That was
12 one of the things.

13 Q. Well, let's focus on one problem at a time and
14 make it easier for us. Would the screen go dark or would
15 just the blue dot stop moving?

16 A. The blue dot, it doesn't always move. Depends on
17 the highway you're on. If you're on terrain which is
18 fairly plain, like in Texas, it doesn't really look like
19 it's moving. If there's a lot of objects around you and
20 different lakes and stuff, then it looks like it's moving.
21 But it would just freeze up and cease to be functioning.

22 Q. Would the -- when the phone froze in these
23 situations that you're talking about, would the screen go
24 dark?

25 A. No.

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1 Q. It would still be illuminated?

2 A. Correct.

3 Q. Okay. So when that happened, what would you do?

4 A. I would have to get to a safe place, pull the
5 truck over where a truck could pull over.

6 Q. Yes.

7 A. Remove the phone from its holder, take the
8 battery out, and wait for 30 to 60 seconds, put the
9 battery back in, and turn it back on.

10 Q. So in these situations you were actively using
11 the GPS feature of the phone, the phone screen would
12 freeze, but still be illuminated, correct?

13 A. Correct.

14 Q. And then in order to reboot the phone, you would
15 have to pull over, pull the battery and put the battery
16 back in?

17 A. That's correct.

18 Q. And then it would start to function again?

19 A. Yeah.

20 Q. And how long -- how often did this occur to you?

21 A. It occurred with increasing frequency the longer
22 I had the phone. Sometimes it would happen once a day.
23 Sometimes it would happen multiple times a day. Sometimes
24 it would occur, you know, depending on how much I was
25 using it, you know.

10 (Pages 34 to 37)

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1 Q. I'm not. Tell me about that.
 2 A. That's something you use in a truck quite a bit.
 3 You plug it in and you can put in household 120 current
 4 types of things like that charger that came with the
 5 phone.
 6 Q. Okay. So there's a device that you can buy to
 7 use with a tractor-trailer rig that will convert -- is it
 8 the cigarette lighter or some other thing to a 120-volt
 9 that you can then use a household device in?
 10 A. It can be either.
 11 Q. Either?
 12 A. Yeah. It just simply converts it from 12-volt to
 13 120-volt so you can use the charger that has a wall plug
 14 rather than a cigarette lighter plug.
 15 Q. Okay. Why did you have two batteries for the
 16 phone?
 17 A. In case one went dead.
 18 Q. And then I take it from your testimony that the
 19 way you would fix that dying phone problem is to take out
 20 and reinsert the battery or put a new battery in?
 21 A. Either/or, yeah.
 22 Q. Do you know if the phone was dying because the
 23 battery was out of juice?
 24 MS. SMITH: Objection; form.
 25 THE WITNESS: I kept fairly close attention to

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1 see if I can -- you told me that you had the Fascinate for
 2 about a year, right?
 3 A. To the best of my knowledge.
 4 Q. To the best of your knowledge. Does that mean as
 5 you get closer to the end of that year, the phone was
 6 dying more?
 7 A. I would say that's an accurate assessment, yeah.
 8 Q. Is it also accurate to say that the phone was
 9 more apt to dying the longer you used it on a particular
 10 day?
 11 MS. SMITH: Objection; form.
 12 THE WITNESS: I -- the more you would use the
 13 phone, the more likely it was to die because simply
 14 because of the defect that was inherent to that phone
 15 would occur the more you used it. I mean, if you're not
 16 using the phone and it's idle, it's less likely to -- an
 17 analogy would be the more you drive your car, the more
 18 likely you are to have an accident. Does that answer your
 19 question?
 20 BY MR. VOLNEY:
 21 Q. No, that doesn't really answer my question.
 22 A. Can you rephrase the question.
 23 Q. Well, I'm trying to understand -- you realize
 24 you've sued Samsung and I'm trying to figure out so I can
 25 understand exactly what it is the defect that you're

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1 where the charge was at all times and usually kept the
 2 battery -- the phone charged when I would start my daily
 3 driving. And in the event that it was running low, I
 4 would stop or routinely stop and make sure that I started
 5 with a fresh battery in the morning, kept that one charged
 6 and made sure that they were charged overnight.
 7 BY MR. VOLNEY:
 8 Q. Did the phone dying that you've described to me
 9 occur more often with the low battery, a fully charged
 10 battery? Is there any -- were you able to determine if
 11 there was some connection between the charge in the
 12 battery and the phone dying?
 13 MS. SMITH: Objection; form.
 14 THE WITNESS: I don't believe there was any
 15 correlation.
 16 BY MR. VOLNEY:
 17 Q. Did you do any testing to figure that out?
 18 A. I usually kept my batteries fully charged at all
 19 times, so I don't think that was an issue.
 20 Q. How often was this phone dying -- how often did
 21 that occur?
 22 A. It would start fairly infrequently and then got
 23 worse as time progressed. The longer I used it, the more
 24 it would die.
 25 Q. Okay. That's ambiguous to me. Sorry. Let me

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1 complaining about in your lawsuit, and you've told me one,
 2 which is the GPS freezing. You told me that that occurred
 3 fairly frequently while you were using the GPS function
 4 with your phone, right? And then the second one you told
 5 me is that you suffered from a loss of signal for no
 6 apparent reason and the phone would just die while you
 7 were using it, right?
 8 A. Right.
 9 Q. It's sort of the No. 2 defect you're talking
 10 about. And I'm trying to get an idea of how often that
 11 would happen. Once a day, twice a day, three times a day,
 12 once a week, once a month. Can you give me some idea of
 13 the frequency of this problem manifesting itself in the
 14 device.
 15 MS. SMITH: Objection; form.
 16 THE WITNESS: It would occur -- the longer I had
 17 the phone, the more frequently it would occur. It started
 18 like once a week. After a few months it would happen two
 19 or three times a week. When I called Verizon to find out
 20 why it was happening, the third or fourth time it was
 21 occurring multiple times per day. So there isn't a
 22 specific, you know, it happened 3.2 times a day type of
 23 thing.
 24 BY MR. VOLNEY:
 25 Q. Okay. And then it seems like the third defect

12 (Pages 42 to 45)

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1 you've indicated that your Fascinate has was that it would
 2 go into sleep mode and wouldn't turn back on.
 3 A. Right.
 4 Q. How would that defect manifest itself?
 5 MS. SMITH: Objection; form.
 6 THE WITNESS: You're familiar with how sleep mode
 7 works.
 8 BY MR. VOLNEY:
 9 Q. I don't have a Samsung phone, but you leave your
 10 phone idle for a period of time and it goes dark?
 11 A. To save batteries or to save energy. And then
 12 you tap one of the buttons or functions and it becomes
 13 light again.
 14 Q. Right.
 15 A. Okay. That's normal.
 16 Q. Correct.
 17 A. This phone would go dark and you would go to
 18 reactivate it so it would come light again and find out
 19 that it was actually off.
 20 Q. So how often would that happen?
 21 A. Fairly regularly.
 22 Q. Well, give me a sense.
 23 MS. SMITH: Objection; form.
 24 BY MR. VOLNEY:
 25 Q. I mean, I don't have your phone. I haven't been

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1 THE WITNESS: Anywhere from as little as four to
 2 as many as 12 hours, maybe more, depending on if I was
 3 laid over and only waiting for phone calls or making phone
 4 calls. Or if I was on a long haul drive. So, yeah,
 5 there's a broad range.
 6 BY MR. VOLNEY:
 7 Q. If you were on a long haul drive, would you be
 8 using the Fascinate during the entirety of that drive?
 9 A. I would say yes, yeah.
 10 Q. And I think your testimony is that if you were
 11 laid over, you might not be using it so much, you might
 12 just be using it for phone calls?
 13 A. Yeah.
 14 Q. Did you also use it for e-mailing?
 15 A. Yes.
 16 Q. And for texting?
 17 A. Yes.
 18 Q. For any other type of applications?
 19 A. Movies.
 20 Q. Anything else you recall?
 21 A. There were a lot of features on that phone, so I
 22 would use it for making phone calls, GPS navigation,
 23 watching movies, texting. Entertainment.
 24 Q. Did you ever back the Fascinate up to a computer?
 25 A. I believe I did try to back up the information

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1 able to look at it yet.
 2 A. All right.
 3 Q. So you were the person who owned the phone, so --
 4 you're the one who sued STA, Samsung Telecommunications of
 5 America. So I'm trying to get a sense of -- you say it
 6 didn't wake up from sleep mode. How often did that
 7 happen?
 8 A. Did you say "stay"?
 9 Q. Samsung Telecommunications of America, the entity
 10 you sued.
 11 A. Okay. I'm just --
 12 Q. It's all right.
 13 A. How often would the phone go into sleep mode and
 14 not wake up?
 15 Q. Right.
 16 A. Again, with increasing frequency. The longer I
 17 had it, the longer I used it.
 18 Q. Well, did it go from once a week to once a day?
 19 A. Once a week to multiple times a day as -- the
 20 longer I had it, the worst it would get. Is that an
 21 adequate answer?
 22 Q. That's a fair answer.
 23 How many hours a day do you spend using or did
 24 you spend using your Fascinate?
 25 MS. SMITH: Objection; form.

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1 with it, yeah.
 2 Q. With your personal computer?
 3 A. Yeah.
 4 Q. Did you do that regularly? Give me a sense of --
 5 were you religious about backing it up? Was it just on
 6 one or two occasions that you were attempting to back it
 7 up?
 8 A. I was definitely not religious.
 9 Q. About that?
 10 A. About that.
 11 Q. Right.
 12 A. I really can't recall how often I would do it.
 13 Q. Did you -- did the phone ever suffer any water
 14 damage?
 15 A. Not that I can recall.
 16 Q. Did you ever drop it, crack it?
 17 A. I don't believe I damaged the phone in any way
 18 that would prevent it from working.
 19 Q. Did you ever leave the phone in a hot vehicle,
 20 for example?
 21 A. I don't believe so.
 22 Q. Do you still have the phone?
 23 A. No.
 24 Q. Where is it?
 25 A. It's in the possession of the law firm.

13 (Pages 46 to 49)

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1 District of California.
 2 Do you see that?
 3 A. Yes.
 4 Q. And you understand that this case, this lawsuit
 5 was then subsequently transferred to the Northern District
 6 of Texas in Dallas? You understand that?
 7 A. Correct.
 8 Q. So you understand the case is currently pending
 9 in Texas?
 10 A. Yes, sir, I do.
 11 Q. In federal court.
 12 Now, I'm going to have questions about this
 13 document in a minute, but I wanted to make sure that was
 14 Exhibit 1. Let me show you what I've marked as Exhibit 2.
 15 (Exhibit 2 was marked for
 16 identification.)
 17 BY MR. VOLNEY:
 18 Q. Mr. Taliaferro, is Exhibit 2 a xerox copy of a
 19 picture of your Galaxy S Fascinate?
 20 MS. SMITH: Objection; form. Go ahead.
 21 THE WITNESS: It appears to be.
 22 BY MR. VOLNEY:
 23 Q. And it's been represented to me by your counsel,
 24 Ms. DiDonato, that this is a copy of some information
 25 related to that particular phone showing a screen on the

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1 cell phone, and then on the back some bar codes and
 2 numbers underneath the battery case.
 3 Do you see that?
 4 A. I do.
 5 Q. And this would be the second -- the replacement
 6 Fascinate that you received from Verizon?
 7 MS. SMITH: Objection; form.
 8 THE WITNESS: If you say so.
 9 BY MR. VOLNEY:
 10 Q. I mean, you don't have the original Fascinate?
 11 A. No.
 12 Q. And if this is your phone, as Ms. DiDonato tells
 13 me, this would have to be the second or replacement phone,
 14 correct?
 15 MS. SMITH: Objection; form.
 16 THE WITNESS: I would say, you know, without --
 17 BY MR. VOLNEY:
 18 Q. Is that fair?
 19 A. This appears to be a facsimile of the phone, yes.
 20 Q. All right.
 21 MS. SMITH: That's Exhibit 2, right?
 22 MR. VOLNEY: Yep.
 23 BY MR. VOLNEY:
 24 Q. Do you recall how much you paid for the Galaxy S
 25 originally when you bought it from Fry's?

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1 A. Can I look at the receipts and I can give you a
 2 more accurate --
 3 Q. Yes. Why don't you pull out of here if you can
 4 the document that would show us how much you paid for it.
 5 MS. SMITH: And we're talking about which phone?
 6 MR. VOLNEY: The one that he purchased in -- was
 7 it October of 2010?
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 BY MR. VOLNEY:
 17 Q. All right. Let's mark that as Exhibit 3.
 18 (Exhibit 3 was marked for
 19 identification.)
 20 BY MR. VOLNEY:
 21 Q. So Exhibit 3 -- if we look at the second page of
 22 Exhibit 3, we can determine that you paid how much for
 23 your Samsung Fascinate?
 24 MS. SMITH: Object to form.
 25 THE WITNESS: To the best of my knowledge,

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1 \$195.36.
 2 BY MR. VOLNEY:
 3 Q. Right. So you paid 149.99 plus tax?
 4 A. Yes.
 5 Q. And that's what Exhibit 3 shows us. All right.
 6 And in connection with that purchase, you must
 7 have entered into a customer service agreement with
 8 Verizon for an additional two years?
 9 A. I believe so.
 10 Q. And that's what -- because that's what this
 11 document that I've marked as Exhibit 4 shows?
 12 A. So are we -- this is something you're now adding
 13 as Exhibit 4?
 14 Q. Right. It's a new document.
 15 (Exhibit 4 was marked for
 16 identification.)
 17 THE WITNESS: Can you repeat the question.
 18 BY MR. VOLNEY:
 19 Q. Is that a copy of your customer agreement with
 20 Verizon?
 21 MS. SMITH: Objection; form.
 22 THE WITNESS: I believe so, although if you
 23 notice, it's not signed.
 24 BY MR. VOLNEY:
 25 Q. Well, I can only go by the documents that you've

16 (Pages 58 to 61)

Exhibit ZZZ.

Samsung Captivate™

a GALAXY S phone

P O R T A B L E Q U A D - B A N D
M O B I L E P H O N E

User Manual

Please read this manual before operating your
phone, and keep it for future reference.



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Section 12: Warranty Information

Standard Limited Warranty

What is Covered and For How Long?

SAMSUNG TELECOMMUNICATIONS AMERICA, LLC ("SAMSUNG") warrants to the original purchaser ("Purchaser") that SAMSUNG's phones and accessories ("Products") are free from defects in material and workmanship under normal use and service for the period commencing upon the date of purchase and continuing for the following specified period of time after that date:

Phone	1 Year
Batteries	1 Year
Leather Case	90 Days
Holster	90 Days
Other Phone Accessories	1 Year

What is Not Covered? This Limited Warranty is conditioned upon proper use of Product by Purchaser. This Limited Warranty does not cover: (a) defects or damage resulting from accident, misuse, abnormal use, abnormal conditions, improper storage, exposure to moisture or dampness, neglect, unusual physical, electrical or electromechanical stress, or defects in appearance, cosmetic, decorative or structural

items, including framing, and any non-operative parts unless caused by SAMSUNG; (b) defects or damage resulting from excessive force when pressing on a touch screen; (c) equipment that has the serial number or the enhancement data code removed, defaced, damaged, altered or made illegible; (d) any plastic surfaces or other externally exposed parts that are scratched or damaged due to normal use; (e) malfunctions resulting from the use of Product in conjunction or connection with accessories, products, or ancillary/peripheral equipment not furnished or approved by SAMSUNG; (f) defects or damage from improper testing, operation, maintenance, installation, service, or adjustment not furnished or approved by SAMSUNG; (g) defects or damage from external causes such as collision with an object, or from fire, flooding, sand, dirt, windstorm, lightning, earthquake, or from exposure to weather conditions, or battery leakage, theft, blown fuse, or improper use of any electrical source; (h) defects or damage caused by cellular signal reception or transmission, or viruses or other software problems introduced into the Product; (i) any other acts which are not the fault of SAMSUNG; or (j) Product used or purchased outside the United States. This Limited Warranty covers batteries only if battery capacity falls below 80% of rated capacity or the battery leaks, and this Limited Warranty does not cover any battery if (i) the battery has been charged by a battery charger not specified or approved by SAMSUNG for charging the battery, (ii) any of the seals on the battery are broken or show

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evidence of tampering, or (iii) the battery has been used in equipment other than the SAMSUNG phone for which it is specified.

What are SAMSUNG's Obligations? During the applicable warranty period, SAMSUNG will repair or replace, at SAMSUNG's sole option, without charge to Purchaser, any defective component part of Product. To obtain service under this Limited Warranty, Purchaser must return Product to an authorized phone service facility in an adequate container for shipping, accompanied by Purchaser's sales receipt or comparable substitute proof of sale showing the original date of purchase, the serial number of Product and the sellers' name and address. To obtain assistance on where to deliver the Product, call Samsung Customer Care at 1-888-987-4357. Upon receipt, SAMSUNG will promptly repair or replace the defective Product. SAMSUNG may, at SAMSUNG's sole option, use rebuilt, reconditioned, or new parts or components when repairing any Product or replace Product with a rebuilt, reconditioned or new Product. Repaired/replaced cases, pouches and holsters will be warranted for a period of ninety (90) days. All other repaired/replaced Product will be warranted for a period equal to the remainder of the original Limited Warranty on the original Product or for 90 days, whichever is longer. All replaced parts, components, boards and equipment shall become the property of SAMSUNG. If SAMSUNG determines that any Product is not covered by this Limited Warranty, Purchaser

must pay all parts, shipping, and labor charges for the repair or return of such Product.

What Are The Limits On Samsung's Warranty/liability? EXCEPT AS SET FORTH IN THE EXPRESS WARRANTY CONTAINED HEREIN, PURCHASER TAKES THE PRODUCT "AS IS," AND SAMSUNG MAKES NO WARRANTY OR REPRESENTATION AND THERE ARE NO CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, OF ANY KIND WHATSOEVER WITH RESPECT TO THE PRODUCT, INCLUDING BUT NOT LIMITED TO:

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